

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

JOSEPH DI GIOVANNA,

Plaintiff,

-against-

**BETH ISRAEL MEDICAL CENTER,
and CONTINUUM HEALTH
PARTNERS, INC.,**

Defendants.

-----X

NOTICE OF MOTION

Civil Action No.: 08 CV 02750

PLEASE TAKE NOTICE, that upon the annexed Declaration of Louis Ginsberg, Esq., and the exhibits thereto, and all prior pleadings and proceedings in this action, Plaintiff Joseph Di Giovanna will move this Court at the United States Courthouse, 500 Pearl Street, New York, New York, on a date and time to be designated by the Court, for an order pursuant to 28 U.S.C. 1446(b), to remand this matter back to state court on the ground that Defendants Beth Israel Medical Center, and Continuum Health Partners, Inc., failed to properly remove to federal court.

Dated: Roslyn New York
April 2, 2008

Respectfully submitted,

LAW FIRM OF
LOUIS GINSBERG, P.C.

By: S/

Louis Ginsberg (LG 1048)
1613 Northern Blvd.
Roslyn, New York 11576
(516) 625-0105
Attorneys for Plaintiff

To: Rory J. McEvoy, Esq.
Edwards Angell Palmer & Dodge LLP
750 Lexington Avenue
New York, NY 10022
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH DI GIOVANNA,

Plaintiff,

-against-

**BETH ISRAEL MEDICAL CENTER,
and CONTINUUM HEALTH PARTNERS, INC.**

Defendants.

NOTICE OF MOTION

**The Law Firm of Louis Ginsberg P.C.
1613 Northern Blvd.
Roslyn, NY 11576
(516) 625- 0105**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X		
JOSEPH DI GIOVANNA,	:	DECLARATION OF
	:	<u>LOUIS GINSBERG</u>
	:	
Plaintiff,	:	
-against-	:	
	:	Civil Action No: 08 CV 02750
BETH ISRAEL MEDICAL CENTER,	:	
and CONTINUUM HEALTH	:	
PARTNERS, INC.,	:	
	:	
Defendants.	:	
-----X		

Louis Ginsberg, an attorney duly admitted to practice before the United States District Court, Southern District of New York, under penalty of perjury, affirms as follows:

1. I am a lawyer with the Law Firm of Louis Ginsberg, P.C., attorneys for Plaintiff in the above entitled action and I am familiar with the facts and circumstances set forth herein.
2. I make this Declaration in support of Plaintiff's Motion to Remand.
3. Pursuant to 28 U.S.C. § 1446(b), the notice of removal of a civil action or proceeding shall be filed within thirty (30) days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty (30) days after the

service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

4. Both Defendants were served with a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, the Summonses and Complaint, on or about January 10, 2008. Defendants were served by personal service on their managing agent, Ms. M. Ortiz (See **Exhibit A**). Pursuant to CPLR § 311, personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows: (1) upon any domestic or foreign corporation, to an officer, director, managing or general agent

5. Defendants removed this case to federal court late, on or about March 14, 2008, after the thirty (30) day period for removal had expired.

6. Defendants' failure to remove this matter to the United States District Court for the Southern District of New York in a timely manner, in accordance with 28 U.S.C. § 1446(b) is grounds for a remand of this action to the Supreme Court of the State of New York, County of New York.

Dated: Roslyn, New York
April 2, 2008

S/

Louis Ginsberg (LG 1048)

ABC PROCESS SERVICE INC.
Attorney:
LOUIS GINSBERG, P.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH DI GIOVANNA

(PLAINTIFF)

Index No 07116437

against

Date Filed / /
Office No LOG010555WB

BETH ISRAEL MEDICAL CENTER, ETAL;

(DEFENDANT)

STATE OF NEW YORK, COUNTY OF NEW YORK

SS:

SCHADRAC LAGUERRE being duly sworn, deposes and says

that he is over the age of 18 years, not a party to the action, and resides in the State of New York:

That on the 10 day of January 2008 at 2:50 PM, at

555 WEST 57TH ST, 18TH FLR;NY, NY 10019

he served the annexed SUMMONS, COMPLAINT AND JURY TRIAL DEMANDED

upon CONTINUUM HEALTH PARTNERS, INC.

in this action, by delivering to and leaving with said MS. M. ORTIZ, MANAGING AGENT

a true copy thereof.

Deponent describes person served as aforesaid to the best of deponents ability at the time and circumstances of service as follows:

1. Sex FEMALE Color BROWN Hair BLACK app.age 40 YRS app.ht 5'8" app.wt 150 LBS

DEPONENT FURTHER SAYS, that he knew the Corporation so served as aforesaid to be the Corporation mentioned and described in the said SUMMONS, COMPLAINT AND JURY TRIAL DEMANDED.

SWORN to before me this 16

day of January 2008

SCHADRAC LAGUERRE
License No.: 1021952

:bb

JAY BRODSKY
Notary Public, State of New York
No. 31-4683271
Qualified in New York County
Commission Expires Feb 2, 2011

NEW YORK
COUNTY CLERK'S OFFICE

JAN 22 2008

NOT COMPALED
WITH COPY FILE

ABC PROCESS SERVICE INC.
Attorney:
LOUIS GINSBERG, P.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH DI GIOVANNA

(PLAINTIFF)

Index No 07116437

against

Date Filed 12/11/2007

Office No LOG010555WE

BETH ISRAEL MEDICAL CENTER, ETAL;

(DEFENDANT)

STATE OF NEW YORK, COUNTY OF NEW YORK

SS:

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he served the annexed SUMMONS, COMPLAINT AND JURY TRIAL DEMANDED

upon BETH ISRAEL MEDICAL CENTER,

in this action, by delivering to and leaving with said MS. M. ORTIZ, MANAGING AGENT

a true copy thereof.

Deponent describes person served as aforesaid to the best of deponents ability at the time and circumstances of service as follows:

1. Sex FEMALE Color BROWN Hair BLACK app.age 40 YRS app.ht 5'8" app.wt 150 LBS

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